

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ARROWOOD INDEMNITY COMPANY,

Defendant.

No. 2:17-cv-01212-RSL

STIPULATED MOTION AND
~~PROPOSED~~ ORDER TO SEAL
EXHIBITS SUPPORTING PARTIES'
RESPECTIVE OPPOSITIONS TO
MOTIONS FOR SUMMARY
JUDGMENT

NOTE ON MOTION CALENDAR:
November 30, 2018

I. INTRODUCTION & RELIEF REQUESTED

Pursuant to Local Civil Rule 5(g), Plaintiff Costco Wholesale Corporation ("Costco") and Defendant Arrowood Indemnity Company ("Arrowood") (collectively, the "Parties") respectfully request leave to file under seal certain exhibits supporting their respective Oppositions to the opposing party's Motions for Summary Judgment. These documents relate to confidential communications in the underlying litigation (*Ellis, et al. v. Costco Wholesale Corporation*, No. C04 3341 EMC (N.D. Cal.)) and contain information protected under the doctrines of attorney-client privilege and work product protection. The Parties agree and

STIPULATED MOTION AND ~~PROPOSED~~ ORDER TO SEAL EXHIBITS
SUPPORTING PARTIES' RESPECTIVE OPPOSITIONS TO MSJ- 1
Cause No. 2:17-cv-01212-RSL

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1 stipulate that the exhibits identified below should be sealed consistent with this Court's orders
2 regarding the Parties' previous motions to seal. Dkts. 73 & 74. The Parties therefore
3 respectfully request that the Court grant this Stipulated Motion.

4 II. CERTIFICATION

5 Pursuant to LCR 5(g)(1)(A) and (3)(A), the Parties certify that they met and conferred in
6 an attempt to reach agreement on the need to file the documents outlined in this motion under
7 seal, to minimize the amount of material filed under seal, and to explore redaction and other
8 alternatives to filing under seal. These discussions took place via electronic mail and telephone
9 over the course of November 29 and November 30, 2018. Participants in the discussions were
10 Nicholas Brown (on behalf of Costco), and Taylor Meehan (on behalf of Arrowood).
11

12 III. LEGAL AUTHORITY AND ARGUMENT

13 Because there is a stipulated protective order governing the exchange of confidential
14 documents in this matter, the party who designated a document confidential must provide the
15 Court with a "specific statement of the applicable legal standard and the reasons for keeping a
16 document under seal." LCR 5(g)(3)(B). Here, records attached to a motion or opposition for
17 summary judgment may be sealed when "compelling reasons" outweigh the presumption of
18 disclosure. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-80 (9th Cir. 2009). It is
19 Costco's position that compelling reasons exist in this case because the limited information to be
20 sealed is attorney-client privileged material and protected work product made by Costco to its
21 insurers. *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 400-01 (1985). Costco therefore requests
22 that the Court seal the following declaration exhibits, and Arrowood does not object to this
23 request:
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25

- 26 • Declaration of Nicholas Brown in Support of Costco's Opposition to Arrowood's
27 Motion for Summary Judgment - **Exhibit 64**

- Declaration of Gerald Maatman in Support of Costco's Opposition to Arrowood's Motion for Summary Judgment – **Exhibits JJ, KK**
- Declaration of Alexander Potente in Support of Arrowood's Opposition to Costco's Motion for Summary Judgment – **Exhibits 2, 3, & 20**
- Declaration of Robert L. Christie in Support of Arrowood's Opposition to Costco's Motion for Summary Judgment – **Exhibit 21**¹

These documents are similar in nature to the communications between Costco and its insurers previously sealed by the Court. Dkt. 73. Accordingly, these exhibits should be sealed in their entirety as indicated above.

It is Costco's position that a less restrictive alternative to the relief sought would not be sufficient. As explained above, Costco has requested sealing documents only when the entire document is privileged or protected under the doctrines of attorney-client privilege or work product protection. Moreover, it is Costco's position that the Parties must file the confidential material in support of their respective oppositions to adequately protect their interests in this case. Costco therefore request permission to seal in their entirety the exhibits as identified above, and Arrowood does not object to this request.²

The Parties reserve all rights to assert or challenge any confidentiality designation with respect to these documents at trial.

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¹ Exhibit 21 to the Declaration of Robert L. Christie is Mr. Christie's Expert Report in this matter. Arrowood is filing Mr. Christie's Expert Report under seal consistent with the Court's orders. Dkts. 73 & 74.

² The Parties have filed redacted versions of the identified documents in the public record, with unredacted versions of each being filed under seal, subject to the Court's approval of this Stipulated Motion

IV. CONCLUSION

The Parties respectfully request that the Court maintain under seal unredacted versions of the filings, with appropriately redacted versions of those documents being made part of the public record.

STIPULATED TO this 30th day of November, 2018.

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Matthew J. Segal, WSBA #29797

Nicholas W. Brown, WSBA #33586

By s/ Alexander E. Potente

Alexander E. Potente, WSBA #48858

James A. Taylor Meehan, *Admitted Pro Hac Vice*

Curtis Darrow Parvin, *Admitted Pro Hac Vice*

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Attorneys for Defendant Arrowood Indemnity Company

ORDER

IT IS HEREBY ORDERED that this Stipulated Motion to Seal Exhibits Supporting Parties' Respective Opposition to Motions for Summary Judgment is GRANTED.

DATED this 4th day of Dec., 2018.



Honorable Robert S. Lasnik
United States District Judge